



TRIDENT SEAFOODS CORPORATION

5303 Shilshole Ave NW, Seattle, WA 98107-4000 • (206) 783-3818 • Fax: (206) 782-7195
Domestic Sales: (206) 783-3474 • Fax: (206) 782-7246
Export Sales: (206) 783-3818 • Fax: (206) 782-7195

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

July 19, 2000

Federal Communications Commission
Magalie Roman Salas, Office of the Secretary
445 12 Street SW
Room TW-A325
Washington, D.C. 20554

Re: WT Docket No. 00-48, FCC 00-105 - Comments on proposal to apply GMDSS rules to the commercial fishing industry

Dear Commissioners,

We request that you include fish tender vessels of 300 gross tons and greater, in addition to vessels that catch and/or process fish and other marine life, in your decisions regarding GMDSS applicability to fishing vessels. You have given a temporary conditional waiver (FCC Order 98-296) to catcher-boats and fish processing vessels, and have asked for comments on your intent to continue considering those vessels to be "cargo vessels" (WT Docket No. 00-48). Yet, you overlooked fishing tender vessels.

Fish tender vessels are an integral part of the fishing industry fleet and should be granted the identical consideration based on the same rationalization used for catcher-boats and fish processing vessels. Tender vessels provide transport of materials and goods, as well as other services, to both fishing vessels and fish processing vessels. They transport fish, materials, and so forth between catcher-boats and fish processors, as well as between the vessels and shore, on an almost continuous basis. Therefore, communications between those vessels is both critical and essential to safe operations. The other concerns outlined in 98-296 and in the attached letter of June 15, 2000, such as lack of shore-based receiving stations, participation in at-sea rescues, and cost, apply to tender vessels as well as catcher-boats and at-sea processors.

In July 1998, Senator Murkowski presented his proposal to have the applicability of the GMDSS requirements for the fishing fleets reviewed by the appropriate federal regulatory agencies. He specifically stated that the review would apply to fishing industry vessels. He then, upon questioning by Senator Gregg, went on to list catcher-boats, catcher-processors, mothership processors and fish tender vessels. The proposed section 629 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act 1999 specifically stated "fishing industry vessels". Our Federal laws and regulations delineate fishing industry vessels. Title 46 U.S. Code Chapter 45, "Uninspected Commercial Fishing Industry Vessels", addresses three types of fishing industry vessels while Chapter 21 defines each. Title 46 Code of Federal Regulations Part 28 defines "commercial fishing industry vessel" to mean a fishing vessel, a fish tender vessel, or a fish processing vessel. When Congress dropped Senator Murkowski's amendment to the Appropriations Bill (Section 629), we were told that the FCC was already

Alaska

 The American Connection

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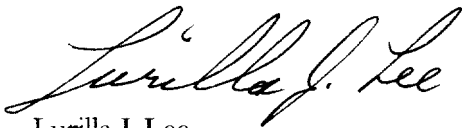
Washington

January 19, 2000

addressing this issue of GMDSS applicability to the fishing fleet. In reviewing the Congressional record on the topic, we naturally assumed fish tender vessels were being included as part of fishing industry vessels. However, that was not the case. Fish tender vessels were not included and we wish to correct that oversight.

Thank you very much for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Lurilla J. Lee". The signature is written in black ink and is positioned above the printed name and title.

Lurilla J. Lee

Vice President of Vessel Safety

- Enclosure
- (1) Copy of Fishing Industry letter of June 15, 2000 to WT Docket No. 00-48
 - (2) Excerpt from Senate Record of July 23, 1998
 - (3) Title 46 USC Chapter 45, Application section
 - (4) Title 46 USC Chapter 21, Definitions
 - (5) 46 CFR 28, Definitions

June 15, 2000

Federal Communications Commission
Magalie Roman Salas, Office of the Secretary
Federal Communications Commission
445 12 St. SW
Room TW-A325
Washington, D.C. 20554

Re: Comments on proposal to apply GMDSS rules to the commercial fishing industry

Dear Commissioners:

This letter is written on behalf of the many companies and organizations that own or represent vessels in the Alaska fishing fleet. While not all of the boats represented by the undersigned are greater than 300 gross tons and therefore potentially subject to the Global Marine Distress and Safety System (GMDSS) regulations, we are concerned that the implementation of GMDSS digital selective calling requirements will severely and negatively impact all fishing vessels' ability to monitor and respond to calls of distress in the North Pacific. We are therefore pleased to offer comments in response to the Notice of Proposed Rule Making and Memorandum Opinion and Order released by the Commission on March 24, 2000. Please note that our comments are directed specifically at the Digital Selective Calling (DSC) aspect of the GMDSS regulations. We fully support all other elements of GMDSS implemented prior to February 1, 1999.

The Alaska fishing fleet favors the Commission's decision to grant a temporary waiver from GMDSS requirements to fishing vessels. In its November 20, 1998 Order as well as the more recent March 24, 2000 document, the FCC correctly states that due to the current lack of shore-based MF and HF DSC monitoring infrastructure, requiring fishing vessels to carry the GMDSS equipment at this time would impose an unnecessary financial burden and could jeopardize the integrity of emergency communications throughout the Alaskan fishing fleet. Both are important reasons to provide the waiver. Equally important is the fact that the waiver provides the opportunity to initiate a new rule making process addressing the fundamental question of whether fishing vessels should be required to comply with the Commission's GMDSS DSC rules at all.

Unfortunately, the fishing industry did not adequately involve itself in the first (1992) rule making process. As a result, many important issues related to the appropriateness of requiring GMDSS communications equipment on fishing vessels were not raised in comments at that time. In fact, most fishing vessel owners were unaware of the GMDSS requirements until just prior to the February 1, 1999 effective date. We believe that the fishing industry in general, and the Alaska fleet in particular, are unique members of the maritime community and are not appropriate platforms for the required GMDSS technology.

Encl(1)

We oppose application of the GMDSS requirements on commercial fishing vessels for the following reasons:

As stated in the SOLAS Convention, fishing vessels are specifically exempt from GMDSS requirements. Since the Communications Act does not recognize fishing boats as a class of vessel distinct from "cargo ships", the FCC has no regulatory mechanism by which to provide this exemption. We have, essentially, a "catch-22" whereby SOLAS exempts fishing vessels from GMDSS requirements, but the FCC cannot honor that exemption because according to the Act, there is no such thing as a fishing vessel!

We believe that the SOLAS exemption of fishing vessels reflects the fact that the fishing fleet and the cargo fleet have entirely different needs, abilities and characteristics. Failure to recognize these differences when regulating the fishing fleet is problematic and, as in the case of GMDSS, could result in the degradation of existing emergency communication systems in the Alaskan fishing fleet and an undue economic burden on the industry.

It is both dangerous and inefficient to require GMDSS capabilities of just a portion of the fishing fleet. At the present time, virtually all vessels fishing in Alaskan waters monitor VHF channel 16 (156.8 MHz) and 2182 kHz. This results in a web of ship-to-ship and ship-to-shore communications throughout the Aleutian Islands, Bering Sea, and Gulf of Alaska. Given the vastness of the Alaskan fishing grounds and the distance from Coast Guard assets and facilities, the first help on the scene of a marine casualty is quite often other fishing boats in the area. GMDSS has been designed primarily as a ship-to-shore system. The existing communications link between all Alaska fishing vessels would be broken by the application of GMDSS technology to a select portion of the fleet that, although still required to monitor channels 16 and 2182 kHz, may no longer monitor those channels with the same diligence. The fleet believes the potential cost to existing ship-to-ship communications far outweighs the benefit of a possible future improvement in ship-to-shore communications.

Available statistics suggest that the GMDSS system is fraught with problems, particularly false alerts and relays, which may undermine the effectiveness of the GMDSS system. A recently published report shows that false alerts and inappropriate relays continue to plague the system. We strongly object to imposing the GMDSS system at its present level of performance on the fishing fleet. As we've noted above, the Alaska fleet thinks that what we've got now works well. We shouldn't even consider altering or replacing that system until we've got something that we know will perform better, and GMDSS as we know it today clearly does not meet that standard.

Our opinions regarding the GMDSS requirements and the FCC's proposed action on this matter notwithstanding, we believe that it is premature to make a final decision at this time. As noted in the Order, Sea Area A1 installations are not expected to be completed and operational until 2006, which means that should the Commission ultimately decide not to grant fishing vessels a permanent waiver from GMDSS requirements, the rule would be applied sometime in 2007.

With approximately seven years from now until the time that the GMDSS requirements might be applied to fishing vessels, we feel that the fishing industry could better comment on the impact of such requirements and the Commission could make a more informed decision if the rule making process was delayed until some time closer to the date of implementation. A delay would benefit the rule making process in the following ways:

A delay would allow more time to evaluate the effectiveness of GMDSS on a national basis and the appropriateness of requiring the system on affected fishing vessels. As noted above, the GMDSS system in the U.S is plagued with false alerts and relays. According to statistics posted on the U.S. Coast Guard web site, less than 1 % of the GMDSS alerts over the past four years have been actual distress notifications. The results do not speak well of GMDSS in general nor do they indicate much improvement over the period of the survey. If the Commission were forced to make a ruling today based on the present effectiveness of GMDSS, we are confident that fishing vessels would receive a permanent waiver from GMDSS requirements. In reality, the Commission need not make a hasty decision. Industry recommends that the FCC give GMDSS more time to demonstrate its strengths and weaknesses before deciding whether fishing vessels should be required to use it.

A delay would allow the Commission to consider and incorporate into its final decision the most recent technological developments in communications equipment. With the rapid pace of developments in communication technologies, it is quite possible that existing GMDSS technology could be obsolete or otherwise less desirable than some new, currently unexploited technology. Alternatively, existing technologies could be improved - GMDSS equipment might be smaller in size and/or more affordable. In any case, we believe the fishing fleet would be well-served by a ruling from the Commission based on the technology available closer to the time of implementation.

Along similar lines, a delay in a final decision would allow the Commission to consider more contemporary market prices for state-of-the-art GMDSS technology and weigh those costs against the operational benefits of GMDSS at a time closer to the application of the rule. As outlined in the March 24, 2000 ruling, a temporary waiver was justified on the grounds that the immediate cost of the GMDSS equipment outweighed the present benefits. Given the amount of time that is likely to pass before the A1 and A2 systems are operational, it would be extremely difficult for the Commission to predict the relationship of these costs and benefits five years into the future.

If the FCC must decide now whether to apply GMDSS regulations to the fishing fleet, then we believe the answer is clearly no! Plagued by false alerts, the system is far from successful in those sections of the U.S. where it's operational. The equipment is too big and too expensive for fishing vessels of modest size and income. Furthermore, implementing the program introduces the risk that existing emergency communication networks could be disrupted, resulting in a net reduction in safety on the Alaskan fishing grounds.

There is the possibility, however, that the technology and performance of GMDSS could improve over the next five to six years, and that the cost could come down significantly. Industry therefore supports the idea of delaying the rule making process on requiring fishing vessels to use GMDSS until a time much closer to the expiration of the present waiver. Such a delay would give GMDSS every benefit of the doubt and allow the Commission to withhold judgement on the appropriateness of requiring GMDSS on fishing vessels until a time when GMDSS may offer some true advantage to fishermen. If, on the other hand, GMDSS does not prove itself as a potential improvement over current communications within the fishing fleet, then the Commission will have avoided the risk and the financial waste associated with imposing an ineffective GMDSS.

Thank you in advance for considering our comments.

Sincerely,

Blake Skene
Aleutians East Borough

Chris Thompson
Alaska Crab Coalition

Anne Fuglestad
Petersburg Vessel Owners

Robert Chen
FISHING VESSEL OWNERS ASSN

Alan R. Burch
Alaska Dragon Boat Assn

John R. Quinn
Eromanga Forum

Jeffrey R. Stupke
United Fishermen's
Marketing Association, Inc.

Paul C. Paine
UNITED CATCHER BOATS

Terrell J. Lee
Trident Seafoods Corp.

G. E. Reid
P.S.A.

J. Trevor McLehe
AT-SEA PROCESSORS ASSOCIATION

Thom Smith
N.P.L.A.

cc: Senator Ted Stevens
Senator Frank Murkowski
Senator Slade Gorton
Senator Patty Murray

Leslie Hughes
N.P.F.V.O.A.

**DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND
RELATED AGENCIES APPROPRIATIONS ACT, 1999 (Senate - July 23, 1998)**

Mr. MURKOWSKI. Mr. President, I am very happy to yield for a question from the distinguished manager.

Note Mr. GREGG. It is my understanding that this amendment will delay for one year the application of the GMDSS requirements for fishing industry vessels, but not other types of vessels. Is that the understanding of the Senator from Alaska?

Note Mr. MURKOWSKI. Mr. President, the manager is quite correct. This amendment will apply only to fishing industry vessels such as catcher-boats, catcher-processors, mothership processors and fish tender vessels. Other types of vessels to which the rule applies, such as cargo and passenger ships, will not be affected.

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Mr. GREGG. Is it the Senator's intention that the federal agencies involved would then use this period of time to further examine the issue of applying GMDSS requirements to the fishing industry? *Note*

Note Mr. MURKOWSKI. Once again, Mr. President, the distinguished manager is correct. Based on discussions with the two agencies directly involved in this matter, and with the **fishing** industry, it is evident that the industry has legitimate concerns and questions that have not been answered. The moratorium will allow the agencies the time to revisit the issue in the detail that it deserves. I hope they will take the opportunity either to reopen the rulemaking with respect to **fishing industry vessels** or to open a new rulemaking that specifically deals with such **vessels**, so that the unique characteristics of the **fishing** industry are considered.

Mr. GREGG. I thank the Senator. In my view this is a very legitimate goal and I join the Senator from Alaska in expressing the hope that the agencies will revisit this matter.

Enc1(2)

CHAPTER 45—UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS

> Note
terminology

Sec.

- 4501. Application.
- 4502. Safety standards.
- 4503. Fish processing vessel certification.
- 4504. Prohibited acts.
- 4505. Termination of unsafe operations.
- 4506. Exemptions.
- 4507. Penalties.
- 4508. Commercial Fishing Industry Vessel Advisory Committee.

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100-424, § 2(a), Sept. 9, 1988, 102 Stat. 1585, in chapter heading substituted "UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS" for "FISH PROCESSING VESSELS".

Pub.L. 100-424, § 2(a), Sept. 9, 1988, 102 Stat. 1585, substituted "Safety stan-

dards" for "Regulations" in item 4502, "Fish processing vessel certification" for "Equivalency" in item 4503, "Prohibited acts" for "Penalties" in item 4504, and added items 4505 to 4508.

§ 4501. Application

(a) This chapter applies to an uninspected vessel which is a fishing vessel, fish processing vessel, or fish tender vessel.

> NOTE

(b) This chapter does not apply to the carriage of bulk dangerous cargoes regulated under chapter 37 of this title.

(Added Pub.L. 98-364, Title IV, § 402(7)(C), July 17, 1984, 98 Stat. 446, and amended Pub.L. 100-424, § 2(a), Sept. 9, 1988, 102 Stat. 1585.)

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Subsec. (a). Pub.L. 100-424, § 2(a), substituted provisions which related to uninspected fish processing vessel entered into service after Dec. 31, 1987, having more than 16 individuals on board primarily employed in preparation of fish on navigable waters of United States or owned in United States and operating on high seas, for provisions which related to uninspected fishing vessel, fish processing vessel, or fish tender vessel.

Subsec. (b). Pub.L. 100-424, § 2(a), substituted "carriage of bulk" for "carriage of liquid bulk".

Foreign Built Vessels, Equivalent Compliance Until July 28, 1990

Section 7 of Pub.L. 100-424 provided that:

"Until July 28, 1990, a foreign built fish processing vessel subject to chapter 45 of title 46, United States Code, [this chapter] is deemed to comply with the requirements of that chapter if—

"(1) it has an unexpired certificate of inspection issued by a foreign country that is a party to an International Convention for Safety of Life at Sea to which the United States Government is a party; and

"(2) it is in compliance with the safety requirements of that foreign country that apply to that vessel."

Legislative History

For legislative history and purpose of Pub.L. 98-364, see 1984 U.S. Code Cong. and Adm. News, p. 635. See, also, Pub.L. 100-424, 1988 U.S. Code Cong. and Adm. News, p. 2149.

(4) "Coast Guard" means the organization established and continued under section 1 of title 14.

(5) "commercial service" includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(5a) "consideration" means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

(6) "consular officer" means an officer or employee of the United States Government designated under regulations to grant visas.

(7) "crude oil" means a liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

(8) "crude oil tanker" means a tanker engaged in the trade of carrying crude oil.

(8a) "dangerous drug" means a narcotic drug, a controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

(9) "discharge", when referring to a substance discharged from a vessel, includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

(10) "documented vessel" means a vessel for which a certificate of documentation has been issued under chapter 121 of this title.

(10a) "Exclusive Economic Zone" means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983.

(11) "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

(11a) "fishing vessel" means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(11b) "fish processing vessel" means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(11c) "fish tender vessel" means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(12) "foreign vessel" means a vessel of foreign registry or operated under the authority of a country except the United States.

(13) "freight vessel" means a motor vessel of more than 15 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

(13a) "Great Lakes barge" means a non-self-propelled vessel of at least 3,500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title operating on the Great Lakes.

(14) "hazardous material" means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 5103(a) of title 49;

(14a) "major conversion" means a conversion of a vessel that—

(A) substantially changes the dimensions or carrying capacity of the vessel;

(B) changes the type of the vessel;

(C) substantially prolongs the life of the vessel; or

(D) otherwise so changes the vessel that it is essentially a new vessel, as decided by the Secretary.

(15) "marine environment" means—

(A) the navigable waters of the United States and the land and resources in and under those waters;

(B) the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;

(C) the seabed and subsoil of the outer Continental Shelf of the United States, the resources of the Shelf, and the waters superjacent to the Shelf; and

Encl(4)

Note
definitions

Note

of August 4, 1949, 63 Stat. 502, as amended (14 U.S.C. 89).

Coast Guard Representative means a person employed at the cognizant U.S. Coast Guard Marine Safety Office or Marine Inspection Office, or an accepted organization, or a similarly qualified organization approved in examining commercial fishing industry vessels. Contact Chief, Vessel and Facility Operating Standards Division, Commandant (G-MSO-2), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593-0001 for a current list of accepted organizations or similarly qualified organizations.

Coastal Service Pack means equipment provided in liferafts approved by the Commandant for coastal service.

Coastal waters means coastal waters as defined in 33 CFR 175.105.

Coastline means the Territorial Sea Baseline as defined in 33 CFR 2.05-10.

Cold water means water where the monthly mean low water temperature is normally 59 °F (15 °C) or less.

Commandant means the Commandant of the Coast Guard or an authorized representative of the Commandant of the Coast Guard.

Note

Commercial fishing industry vessel means a fishing vessel, fish tender vessel, or a fish processing vessel.

Currently corrected means corrected with changes contained in all Notice to Mariners published by the Defense Mapping Agency Hydrographic/Topographic Center.

Custom engineered means, when referring to a fixed gas fire extinguishing system, a system that is designed for a specific space requiring individual calculations for the extinguishing agent volume, flow rate, and piping, among other factors, for the space.

District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within a district.

Documented vessel means a vessel for which a Certificate of Documentation has been issued under the provisions of 46 CFR part 67.

Equipment Packs means equipment provided in liferafts approved by the Commandant.

Especially hazardous condition means a condition which may be life threaten-

ing or lead to serious injury if continued.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

Fish processing vessel means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

Fish tender vessel means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing or fish tender vessel or a fish processing facility.

Fishing vessel means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Fishing Vessel Drill Conductor means an individual who meets the training requirements of 46 CFR 28.270(c) for conducting drills and providing instruction once a month to each individual on board those vessels to which Subpart C of this section applies.

Fishing Vessel Safety Instructor means an individual or organization that has been accepted by the local Officer-in-Charge, Marine Inspection to train Fishing Vessel Drill Conductors to conduct drills and provide instruction on those vessels to which subpart C of this part applies.

Gasoline as used in this part includes gasoline-alcohol blends and any other fuel having a flash point of 110 °F (43.3 °C) or lower.

Inflatable Buoyant Apparatus means an inflatable buoyant apparatus approved by the Commandant.

Inflatable Liferaft means an inflatable liferaft that is approved by the Commandant.

Length means the length listed on the vessel's Certificate of Documentation or Certificate of Number.

Lifeboat means a lifeboat approved by the Commandant.

Liferaft means a liferaft approved by the Commandant.

Major conversion means a conversion of a vessel that—